

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.980 of 2004

WITH

SPECIAL CIVIL APPLICATION No.990 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MANISHKUMAR KAHENDRABHAI SANGHVI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 980 of 2004
MR PS CHAMPANERI for Petitioner No. 1-5
MR NAGESH SOOD, AGP for Respondent No. 1-3
NOTICE SERVED for Respondent No.7
MR DHAVAL D VYAS for Respondent No. 4-5
SERVED BY RPAD - (N) for Respondent No. 6
2. Special Civil Application No. 990 of 2004
MR PS CHAMPANERI for Petitioner No. 1-5
MR NAGESH SOOD, AGP for Respondent No. 1-3
NOTICE SERVED for Respondent No.7
MR DHAVAL D VYAS for Respondent No. 4-5
SERVED BY RPAD - (N) for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 26/07/2004

COMMON ORAL JUDGEMENT

RULE. Mr.Nagesh Sood, learned AGP, appears and waives service of rule on behalf of respondent Nos.1 to 3 and Mr.Dhaval D. Vyas, learned advocate, appears and waives service on behalf of respondent No.4 and 5. With the consent of the parties, both these petitions are heard together and are disposed of by this common judgment.

2. The land bearing Survey No.2587/1 came to be purchased by the partners of Vinay Corporation, a partnership firm. Initially, there were 7 persons as the partners. Out of which 4 partners retired from the partnership firm vide Partnership Deed dated 29-08-2000. Necessary entry to that effect was made in the Record of Rights vide Entry No.30561 dated 29-12-2000. The said entry came to be certified on 12-02-2001. Thereafter two other persons were inducted as partners, namely, Shri Bhupendra Chandulal Shah and Shri Mahendrabhai Ramanlal Vora. Necessary entry was mutated vide Entry No.30562 dated 29-12-2000 and the said entry came to be certified on 12-02-2001. Thereafter two other entries were made being Entry Nos.30563 dated 29-08-2000 deleting the names of four partners which came to be retired, namely, Smt. Binaben Mukeshchandra Mehta, Smt. Chetanaben Girishkumar Mehta, Shri Mahendrakumar Ramniklal Vora and Shri Bhupendra Chandulal Shah and one another person, namely, Mahendrakumar was inducted as partner. Necessary entry to that effect was also made on 29-12-2000 vide Entry No.30564. Being aggrieved and dissatisfied with the aforesaid two entries being Entry Nos.30563 and 30564, private respondents herein, Binaben Mukeshkumar Mehta and others preferred an appeal before the Dy. Collector, Vadhwani and by judgment and order dated 19-12-2001 the said appeal was allowed and Entry Nos.30563 and 30564 made on 12-02-2001 was set aside. Against the said order, the petitioners herein preferred revision applications before the Collector, Surendranagar being RRT Revision Case Nos.14/2001-2002 and 15/2001-2002. The Collector, Surendranagar vide his judgment and order dated 23-06-2003 allowed both the revision applications and confirmed the Entry Nos.30563 and 30564 made on 29-12-2000 and quashed and set aside the order dated 19-12-2001 passed by the Dy. Collector, Vadhwani.

2.1 Being aggrieved and dissatisfied with the judgment and order passed by the Collector, Surendranagar dated 23-06-2003, the private respondents herein, namely, Binaben Mukeshchandra Mehta and others preferred Revision Application Nos.25 of 2003 and 26 of 2003 before the revisional authority i.e. Secretary (Appeals), Revenue Department, State of Gujarat. The revisional authority

by its judgment and order dated 01-12-2003 partly allowed both the revision applications and quashed and set aside the judgment and order dated 23-06-2003 passed by the Collector, Surendranagar and restored the order dated 19-12-2001 passed by the Dy. Collector, Vadhwan on the ground that the dispute with regard to retirement from the partnership is pending before the Civil Court. Being aggrieved and dissatisfied with the said order dated 01-12-2003 passed by the revisional authority the present petitions have been filed.

3. Mr.P.S.Champaneri, learned advocate for the petitioners, has vehemently submitted that the judgment and order passed by the Dy. Collector as well as the revisional authority are absolutely illegal. He has further submitted that the aforesaid two entries were made on the basis of the Retirement Deed as well as the Partnership Deed and, therefore, there was no illegality committed by the authority in mutating the said entries being Entry Nos.30563 and 30564.

4. Mr.D.D.Vyas, learned Senior Advocate appearing on behalf of the respondents, submitted that the question with regard to retirement of his clients from the partnership firm is pending in the Civil Court. He has further submitted that by forging the signatures of the respondents they were retired as the partners of the partnership firm and, therefore, the Entry Nos.30563 and 30564 are rightly set aside by the competent authority as well as by the Dy. Collector and the same is rightly confirmed by the Secretary (Appeals) i.e. revisional authority.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. The question with regard to retirement of partners, on the basis of which Entry Nos.30563 and 30564 were made, is the subject matter of Civil Suit between the parties being Special Civil Suit No.30 of 2003 which is pending in the Court of 3rd Joint Civil Judge (S.D.), Surendranagar. Therefore, the dispute with regard to retirement of partnership and induction of new partners is not conclusive. As held by catena of judgment of the Hon'ble Supreme Court as well as this Court, the entries do not confer any right, title or interest in favour of any party. The revenue entry is for the fiscal purpose for recovery of revenue. On the basis of entry itself a person does not become the owner and/or no rights are created in his favour and those entries are always subject to the ultimate outcome of the Civil Suit, if

any, pending before the competent Civil Court. In the present case, as stated above, Special Civil Suit no.30 of 2003 is pending in the Court of 3rd Joint Civil Judge (S.D.), Surendranagar. The question with regard to retirement of partners is the subject matter of the said suit. Under the circumstances, the entries which are already made and/or the entries which are deleted are always subject to the ultimate outcome of the Civil Suit. Under the circumstances, it is directed that deletion of Entry Nos.30563 and 30564 and any other entries are subject to the ultimate outcome of the Special Civil Suit No.30 of 2003 pending in the competent Civil Court. The competent authority, more particularly, Talati-cum-Mantry and Mamlatdar are also directed to make a note in the Record of Rights to the effect that the entries which are already there and/or which are deleted are subject to the ultimate outcome of the Special Civil Suit No.30 of 2003 pending in the Court of 3rd Joint Civil Judge (S.D.), Surendranagar. It is also clarified that by mutating the entries and/or deleting the Entry Nos.30563 and 30564 by itself will not create any rights in favour of any party and all the parties are ultimately bound by the judgment and decree that may be passed by the competent Civil Court.

7. Under these circumstances, while confirming the order passed by the revisional authority as well as Dy. Collector, in quashing and setting aside the entry Nos.30563 and 30564, it is directed that the aforesaid decision and deletion of entries will be subject to the ultimate outcome of the Special Civil Suit No.30 of 2003 pending before the 3rd Joint Civil Judge (S.D.), Surendranagar.

8. With these observations and directions, both these petitions are disposed of. Rule is made absolute to the aforesaid terms. No order as to costs.

9. Office is directed to place copy of this order in connected matter.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'